



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2003

Mr. Jerry Bruce Cain
Assistant City Attorney
Office of the City Attorney
P.O. Box 579
Laredo, Texas 78042-0579

OR2003-8121

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191065.

The City of Laredo (the "city") received a request for certain records pertaining to the Non-exclusive Commercial Container Refuse Gathering and Disposing Franchise Ordinance. You have released some of the requested information but claim that release of the remaining requested information may implicate the proprietary interest of a third party under sections 552.104 and 552.110 of the Government Code. You state that you notified Jerry Resendez Enterprises, Inc. d/b/a Trashco ("Trashco") of the request and of its right to submit arguments to this office as to why the information should not be released.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory

¹Section 552.305 provides in relevant part that in giving notice to a private party whose proprietary interests may be implicated by a request for information, the governmental body must include:

(B) a statement, *in the form prescribed by the attorney general*, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

- (i) each reason the person has as to why the information should be withheld; and
- (ii) a letter, memorandum, or brief in support of that reason.

Gov't Code § 552.305(d)(2)(B) (emphasis added). In the future, the city should use the attorney general's prescribed form, which is available at Appendix C of this office's Public Information Handbook and on the Attorney General's Web site at www.oag.state.tx.us.

predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Trashco has not submitted any comments to this office explaining how release of the requested information would affect its proprietary interests. Therefore, Trashco has provided us with no basis to conclude that it has a protected proprietary interest in any of the submitted information. *See* Gov't Code § 551.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations rather than third party interests. Open Records Decision No. 592 (1991). Therefore, in order to claim section 552.104, a governmental body must show some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage from the release of information will not suffice. *See* Open Records Decision Nos. 541 (1990), 592 (1991). In this case, you have not argued that the city is engaged in a specific open bidding situation, or otherwise demonstrated how the release of the information would give an advantage to a competitor. Gov't Code § 552.301(e)(1)(A) (requiring a governmental body to explain the applicability of a raised exception). Therefore, we determine that section 552.104 does not apply in this instance. As you raise no other exceptions, the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Peterson", with a long, sweeping horizontal line extending to the right.

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 191065

Enc. Submitted documents

c: Ms. Alison White Haynes
Wilson, Trevino, Freed, Valls & Trevino, L.L.P.
P.O. Drawer 420048
Laredo, Texas 78042-0048
(w/o enclosures)